IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl. Appeal No.S-1698-SB of 2004
Date of Decision: February 18, 2015

Om Mool Shankar Sharma

...Appellant

VERSUS

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Deepender Singh, Advocate
for the appellant.

Mr.A.S.Klar, Asstt. Advocate General, Punjab
for the respondent-State.

****

INDERJIT SINGH, J.

The appeal has been filed by the appellant against the judgment of conviction dated 21.08.2004 and order of sentence dated 23.08.2004, passed by learned Special Judge, Moga, whereby the accused-appellant was held guilty and convicted and sentenced to undergo rigorous imprisonment for a period of four years and to pay a fine of ₹4,000/- and in default of payment of fine, to undergo rigorous imprisonment for a period of six months under Section 7 of the Prevention of Corruption Act, 1988. He was further directed to undergo rigorous imprisonment for a period of six years and to pay a fine of ₹6,000/- and in default of payment of fine, to undergo rigorous imprisonment for a period of six months under Section 13(2) of the Prevention of Corruption Act, 1988. Both the sentences were ordered

VINEET GULATI
2015.03.18 16:11
I attest to the accuracy and
authenticity of this document
Chandigarh

to run concurrently.

The brief facts of the prosecution case are that after investigation, untraced report was submitted. Learned Special Judge, Moga disagreed with the untraced report and took cognizance of offences and put the accused to trial. As per the facts given in the untraced report, Chamkaur Singh complainant along with Gurdev Singh, Ex.Sarpanch came to DSP Baljit Singh, Punjab Vigilance Bureau and got recorded his statement. Complainant stated that he had been Govt. ration depot holder since January 1999. He was distributing kerosene oil, sugar etc. On 12.11.1999, Om Mool Shankar Sharma, Inspector, Food Supply Moga along with other employee came to his depot. He had checked the depot. During checking, record was found correct. Accused intentionally levelled allegations that depot was lying closed and identity board was not displayed. By making report, accused got the supply stopped to his depot from District Food Supply Controller (DFSC) on 17.12.1999. The complainant received a notice from DFSC Moga about allegations levelled against his depot, inviting explanation. It is also stated that written explanation to notice was given. After giving reply to the notice, complainant met Om Mool Shankar Sharma, Inspector in his office. Accused said that DFSC had ordered enquiry from village and to report. Accused went to the village and recorded statements of 14-15 card holders. On 14.02.2000, complainant met accused in his office and requested him to send favourable report. Accused said that he would take bribe of ₹2,000/- for sending report favouring him. Then

VINEET GULATI
2015.03.18 16:11
I attest to the accuracy and
authenticity of this document
Chandigarh

accused agreed to send the report favouring complainant by taking bribe of ₹1,000/-. Accused said that he would take ₹500/- before sending the report and remaining ₹500/- would be taken after sending the report. Accused asked the complainant to visit his office at Moga afternoon on 16.02.2000 with bribe money of ₹500/-. Complainant went back to his village and met Gurdev Singh, Ex.Sarpanch and told whole story to him. Then they contacted Vigilance Department. After making demonstration etc. by applying Phenolphthalein powder, a raid was planned. Jagdish Arora, Senior Clerk of office of Deputy Director, Animal Husbandry, Moga was joined as Govt. witness. Gurdev Singh, Ex.Sarpanch was deputed as shadow witness. Raid was conducted. The amount of ₹500/- was recovered. After necessary investigation, untraced report was submitted before the Court.

Finding prima facie case, accused-appellant was charge-sheeted under Sections 7 and 13(2) of the Prevention of Corruption Act, to which he pleaded not guilty and claimed trial.

In support of its case, prosecution examined PW-1 Chamkaur Singh, complainant, PW-2 Gurdev Singh, Shadow witness, PW-3 Jagdish Arora, Govt. witness, PW-4 Barish Chander, employee of District Food and Supply Office, Moga, PW-5 Head Constable Sukhbir Singh, PW-6 Amarjit Kaur, Senior Clerk office of DFSC, Moga, PW-7 Krishan Lal Dhingra Ex.AFSO, PW-8 Constable Resham Singh and PW-9 DSP Baljit Singh, Investigating Officer.

At the close of prosecution evidence, the accused-

VINEET GULATI
2015.03.18 16:11
I attest to the accuracy and
authenticity of this document
Chandigarh

appellant was examined under Section 313 Cr.P.C. and he denied the correctness of the evidence and pleaded himself innocent. In defence, accused-appellant examined DW-1 Mehal Singh, DW-2 Sadhu Singh and DW-3 Lal Singh.

The learned trial Court, after appreciation of the evidence, convicted and sentenced the accused-appellant, as stated above.

At the time of arguments, learned counsel for the appellant argued that accused-appellant is entitled to acquittal as no sanction has been taken by the prosecution under Section 19 of the Prevention of Corruption Act. He further argued that no demand has been proved by the witnesses, therefore, on this ground also, appellant is entitled to acquittal. He next argued that a false case has been planted that is why the police filed untraced report but the Court took cognizance without any cogent evidence. Learned counsel for the appellant, therefore, argued that there being merit in the appeal, the same should be allowed and accused-appellant should be acquitted.

On the other hand, learned State counsel argued that case of the prosecution has been duly proved. He admitted that no sanction was taken in the present case from the competent authority. He further argued that prosecution's case has been duly proved by PWs by leading cogent evidence. Learned State counsel, therefore, argued that there being no merit in the appeal, the same should be dismissed.

I have heard learned counsel for the appellant as well as learned State counsel and have gone through the record minutely and

VINEET GULATI
2015.03.18 16:11
I attest to the accuracy and
authenticity of this document
Chandigarh

carefully.

From the evidence on the record, I find that the sanction under Section 19 of the Prevention of Corruption Act is necessary before taking cognizance by the Court. Learned State counsel has admitted that in this case, no sanction has been obtained from the competent authority. In other words, no sanction has been granted by the competent authority for prosecution of the present appellant. As, no sanction has been granted by the competent authority, therefore, cognizance cannot be taken by the Court in the absence of sanction and appellant is liable to be acquitted on this ground alone.

Next, I find that PW-1 Chamkaur Singh complainant, in chief-examination stated that he met accused Om Mool Shankar and Inspector Balbir Singh, who had accompanied accused at the time of checking, in the office of the accused. He told them that no supply had been made to his depot. Accused did not speak but Inspector Balbir Singh told the complainant that he will get the supply from that month. However, accused asked the complainant that he should ask to Inspector Balbir Singh and then he will get the supply issued again to his depot. Then Inspector Balbir Singh asked for ₹1000/- as illegal gratification from him. Accused Om Mool Shankar did not demand illegal gratification but he was also sitting at that time. The complainant further stated that he told Inspector Balbir Singh that he had only ₹500/- in his pocket. The deal was struck at ₹500/- and complainant handed over ₹500/- to Inspector Balbir Singh. He further stated that he had also intimated to the Vigilance Bureau against

VINEET GULATI
2015.03.18 16:11
I attest to the accuracy and
authenticity of this document
Chandigarh

accused Om Mool Shankar that he had got suspended the ration depot of the complainant and also demanding illegal gratification from him. In the chief-examination, the complainant further stated that he handed over ₹500/- to Inspector Balbir Singh, who further handed over the same to accused Om Mool Shankar. The aforesaid incident had taken place in the presence of Jagdish Arora, Shadow witness. Then he called the officials of the Vigilance Staff, who raided and recovered ₹500/- from the left pocket of the shirt of Om Mool Shankar. He further deposed that he had gone alone to give the illegal gratification. In cross-examination PW-1 Chamkaur Singh stated that he had given the tainted money to Inspector Balbir Singh, who further handed over the same to Om Mool Shankar. This statement of PW-1 Chamkaur Singh is not as per the prosecution version. He has nowhere proved the demand raised by the present appellant. He has nowhere stated that bribe money of ₹500/- was paid to present appellant. Rather, as per his version, he paid the money to Inspector Balbir Singh, who demanded the bribe and further handed over the same to present appellant. He also made material improvements in the statement. He nowhere stated that Gurdev Singh, shadow witness was present there. Rather, he stated that money was paid in the presence of Jagdish Arora, shadow witness, which is not the prosecution case. The complainant nowhere stated that Jagdish Arora was the Government witness, rather he stated him as a shadow witness, which is also against the prosecution version. Therefore, from the statement of complainant, a reasonable doubt exists in the

VINEET GULATI
2015.03.18 16:11
I attest to the accuracy and
authenticity of this document
Chandigarh

prosecution version.

PW-2 Gurdev Singh, Ex. Sarpanch, shadow witness, stated that Chamkaur Singh asked him to stand outside the door of the room of the accused while he himself went inside. He cannot tell what transpired between complainant and accused. However, Chamkaur Singh gave signal to him and thereafter, he (PW-2) gave signal to the police party. This statement further shows that even shadow witness Gurdev Singh had not deposed regarding the demand made by present appellant. PW-2 further stated in cross-examination that accused was standing outside the office while other officials were inside the office. This fact is also contradictory to the prosecution version. He also stated that he does not know if Chamkaur Singh had handed over any amount to the Vigilance Bureau because at that time, he was not present. He further stated in cross-examination that office had boundary wall of 5-6 feet in height. He remained standing outside the boundary wall near the gate of the office of the accused. The office is situated 30-40 feet from the boundary wall.

From the evidence on record as deposed by complainant and shadow witness, a reasonable doubt exists in the prosecution version. The statements of these witnesses are contradictory to the prosecution version. Further, as already discussed, the demand and acceptance by the accused-appellant has not been proved by leading cogent evidence. It is settled law that mere recovery of tainted currency notes, alone is insufficient to convict an accused. The

VINEET GULATI
2015.03.18 16:11
I attest to the accuracy and
authenticity of this document
Chandigarh

prosecution is to prove the illegal demand, acceptance and recovery of bribe money from the accused. The prosecution has failed to prove the same by leading cogent evidence. Furthermore, as already discussed, there is no sanction under Section 19 of the Prevention of Corruption Act.

In view of the above discussion, I find that a reasonable doubt exists in the prosecution version and by giving benefit of doubt, the appellant is acquitted of the charges framed against him. The judgment of conviction dated 21.08.2004 and order of sentence dated 23.08.2004, passed by learned Special Judge, Moga are set aside.

Since, the appellant is on bail, his bail bonds stand discharged.

February 18, 2015 **(INDERJIT SINGH)**
Vgulati **JUDGE**

VINEET GULATI
2015.03.18 16:11
I attest to the accuracy and
authenticity of this document
Chandigarh